

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Robert McCampbell and Raven
Property Management

Civil No. 08-490 (JRT/FLN)

Plaintiffs,

v.

**REPORT AND
RECOMMENDATION**

City of St. Paul,

Defendant.

THIS MATTER came before the undersigned United States Magistrate Judge on the Court's April 21, 2009 Order to Show Cause. The matter was referred to the undersigned for Report and Recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons which follow, this Court recommends Plaintiff's lawsuit be **dismissed without prejudice**.

I. FINDINGS OF FACT

This case was filed on February 22, 2008. On April 20, 2009, this Court heard oral argument in Plaintiffs' attorney's Motion to Withdraw [#10]. Plaintiff's attorney, John Shoemaker, stated at the hearing and in his memorandum that his clients had consistently failed to communicate with him beginning in June 2008 and continuing through the day of the hearing. (*See* Mem. In Support, Dkt. 14.) Instead of granting Mr. Shoemaker's Motion to Withdraw, the Court issued an Order to Show Cause on April 21, 2009 ordering Plaintiffs to show cause on or before May 5, 2009 why this case should not be dismissed for failure to prosecute. (Dkt.18.) Plaintiffs have not responded to the Order to Show Cause.

III. LEGAL ANALYSIS

"District courts have inherent power to dismiss *sua sponte* a case for failure to

prosecute . . .” *Sterling v. U.S.*, 985 F.2d 411, 412 (8th Cir.1993). In this case, Plaintiffs failed to communicate and cooperate with their counsel for over nine months. Plaintiffs further failed to respond to the Court’s Order to Show Cause why the case should not be dismissed for failure to prosecute. Their case must therefore be dismissed.

IV. RECOMMENDATION

Based upon all the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED** that Plaintiff’s case be **DISMISSED without prejudice**.

DATED: July 1, 2009

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **July 15, 2009**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party’s brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3,500 words. A judge shall make a de novo determination of those portions to which objection is made.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.